

The applicant shall be notified in writing regarding the application for waiver, including the reason for denial if the application is denied. There is no appeal from a waiver denial under this chapter.

§ 207.4 Approved application.

Approval of Form I-590 by an officer in charge outside the United States authorizes the district director of the port of entry in the United States to admit the applicant conditionally as a refugee upon arrival at the port within four months of the date the Form I-590 was approved. There is no appeal from a denial of refugee status under this chapter.

§ 207.5 Waiting lists and priority handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by the Immigration and Naturalization Service shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Attorney General may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as: Reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

§ 207.6 Control over approved refugee numbers.

Current numerical accounting of approved refugees is maintained for each special group designated by the President. As refugee status is authorized for each applicant, the total count is reduced correspondingly from the appropriate group so that information is readily available to indicate how many refugee numbers remain available for issuance.

§ 207.7 Physical presence in the United States.

For the purpose of adjustment of status under section 209(a)(1) of the Act, the required one year physical presence of the applicant in the United States is computed from the date the applicant entered the United States as a refugee.

§ 207.8 Termination of refugee status.

The refugee status of any alien (and of the spouse or child of the alien) admitted to the United States under section 207 of the Act shall be terminated by any district director in whose district the alien is found if the alien was not a refugee within the meaning of section 101(a)(42) of the Act at the time of admission. The district director shall notify the alien in writing of the Service's intent to terminate the alien's refugee status. The alien shall have 30 days from the date notice is served upon him/her or, delivered to his/her last known address, to present written or oral evidence to show why the alien's refugee status should not be terminated. There is no appeal under this chapter from the termination of refugee status by the district director. Upon termination of refugee status, the district director shall process the alien under sections 235, 236, and 237 of the Act.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Sec.

- 208.1 General.
- 208.2 Jurisdiction.
- 208.3 Form of application.
- 208.4 Filing the application.
- 208.5 Special duties toward aliens in custody of the Service.
- 208.6 Disclosure to third parties.
- 208.7 Employment authorization.
- 208.8 Limitations on travel outside the United States.
- 208.9 Interview and procedure.
- 208.10 Failure to appear.
- 208.11 Comments from the Department of State.
- 208.12 Reliance on information compiled by other sources.
- 208.13 Establishing refugee status; burden of proof.

- 208.14 Approval, denial, or referral of application.
- 208.15 Definition of "firm resettlement."
- 208.16 Entitlement to withholding of deportation.
- 208.17 Decision.
- 208.18 Review of decisions and appeal.
- 208.19 Motion to reopen or reconsider.
- 208.20 Approval and employment authorization.
- 208.21 Admission of asylee's spouse and children.
- 208.22 Effect on deportation proceedings.
- 208.23 Restoration of status.
- 208.24 Revocation of asylum or withholding of deportation.

AUTHORITY: 8 U.S.C. 1103, 1158, 1226, 1252, 1252 note, 1252b, 1253, 1282 and 1283; 31 U.S.C. 9701; and 8 CFR part 2.

SOURCE: 55 FR 30680, July 27, 1990, unless otherwise noted.

§ 208.1 General.

(a) This part shall apply to all applications for asylum or withholding of deportation, whether before an asylum officer or an immigration judge, that are filed on or after January 4, 1995 or pending as of January 4, 1995. No application for asylum or withholding of deportation that has been filed with a District Director or Immigration Judge prior to January 4, 1995, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an Immigration Judge or an Asylum Officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.22 where applicable. The provisions of this part shall not affect the finality or validity of any decision made by District Directors, Immigration Judges, or the Board of Immigration Appeals in any asylum or withholding of deportation case prior to January 4, 1995. The provisions of this part relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), shall apply to applications for asylum or withholding of deportation that are filed on or after November 29, 1990.

(b) There shall be attached to the Office of Refugees, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall di-

rect. These shall include a corps of professional asylum officers who are to receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee laws. The Assistant Commissioner shall be further responsible for general supervision and direction in the conduct of the asylum program, including evaluation of the performance of the employees attached to the Office.

(c) As an ongoing component of the training required by paragraph (b) of this section, the Assistant Commissioner, Office of Refugees, Asylum and Parole, shall coordinate with the Department of State, and in cooperation with other appropriate sources, to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62297, Dec. 5, 1994]

§ 208.2 Jurisdiction.

(a) Except as provided in paragraph (b) of this section, the Office of Refugees, Asylum, and Parole shall have initial jurisdiction over applications for asylum and withholding of deportation filed by an alien physically present in the United States or seeking admission at a port of entry. An application that is complete within the meaning of § 208.3(c)(5) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. With the exception of cases involving crewmen, stowaways, or aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), which are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, and aliens classified pursuant to section 101(a)(15)(S) of the Act, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). An application that is incomplete within the meaning

of § 208.3(c)(5) shall be returned to the applicant.

(b) Immigration Judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served notice of referral to exclusion proceedings under part 236 of this chapter, or served an order to show cause under part 242 of this chapter, after a copy of the charging document has been filed with the Immigration Court. The immigration judge shall make a determination on such claims. In cases where the adjudication of an application has been referred in accordance with § 208.14, that application shall be forwarded with the charging document to the Immigration Court by the Asylum Office. As a matter of discretion, the immigration judge may permit the applicant to amend the application, but any delay caused by such a request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

[55 FR 30680, July 27, 1990, as amended at 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995; 60 FR 44264, Aug. 25, 1995]

§ 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made on Form I-589 (Application for Asylum and for Withholding of Deportation) and shall be submitted, together with any additional supporting material, in triplicate, meaning the original plus two copies. The applicant's spouse and children as defined in section 101 of the Act, 8 U.S.C. 1101(a)(35) and 1101(b)(1), may be included on the application if they are in the United States. One additional copy of the principal applicant's I-589 must be submitted for each dependent listed on the principal's application. An application shall be accompanied by one completed Form FD-258 (Fingerprint Card) for every individual included on the application who is 14 years of age or older. Forms I-589 and FD-258 are available from the INS and from the Immigration Court. The application for asylum or withholding of deportation also shall be accompanied by a total of two photographs of each applicant and two photographs of each dependent included on the application.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.16, 236.3, and 242.17 of this chapter.

(c) The application (Form I-589) shall be filed under the following conditions and shall have the following consequences, as shall be noted in the instructions on the application:

(1) Information provided in completing the application may be used as a basis for the institution of, or as evidence in, exclusion proceedings in accordance with part 236 of this chapter or deportation proceedings in accordance with part 242 of this chapter;

(2) Information provided in the application may be used to satisfy the burden of proof of the INS in establishing the applicant's deportability under part 242 of this chapter;

(3) Mailing to the address provided by the applicant on the application or the last change of address form (INS Form AR-11), if any, received by the INS shall constitute adequate service of all notices or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122), service of which is governed by § 235.6 of this chapter, and an Order to Show Cause (Form I-221), service of which is governed by section 242B(a)(1) of the Act, 8 U.S.C. 1252b(a)(1);

(4) The applicant and anyone other than an immediate relative who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature is evidence that the applicant is aware of the contents of the application. A person other than an immediate relative who assists the applicant in preparing the application also must provide his or her full mailing address;

(5) An application for asylum and for withholding of deportation that does not include a response to each of the questions contained in the Form I-589, that is unsigned, or that is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the INS. The filing of an incomplete application shall not commence the 150-day period

after which the applicant may file an application for employment authorization in accordance with § 208.7(a)(1). If an application has not been mailed to the applicant within 30 days, it shall be deemed complete; and

(6) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act, 8 U.S.C. 1324c.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

§ 208.4 Filing the application.

If no prior application for asylum or withholding of deportation has been filed, an applicant shall file any initial application according to the following procedures:

(a) *With the Service Center by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port of entry through which the alien seeks admission to the United States. The addresses of the Service Centers shall be made available through the local INS Information Unit. Upon receipt of the application, except in the case of an alien who has been convicted of an aggravated felony, the Service Center shall forward a copy of the application to the Department of State.

(b) *With the District Director.* In the cases of:

(1) Stowaways who are presented to the Service,

(2) Crewmen who affirmatively approach a Service officer in order to file for asylum, and

(3) Other aliens seeking admission at a seaport or airport of entry, applications for asylum or withholding of deportation shall be accepted by the District Director having jurisdiction over the port of entry.

The District Director shall immediately forward the application to the

asylum office with jurisdiction over that port of entry.

(c) *With the Immigration Judge.* Initial applications for asylum or withholding of deportation are to be filed with the Immigration Court in the following circumstances (and shall be treated as provided in part 236 or 242 of this chapter):

(1) *During exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien pursuant to part 236 or 242 of this chapter, an initial application for asylum or withholding of deportation from that alien shall be filed thereafter with the Immigration Court.

(2) *After completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been completed, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to reopen pursuant to 8 CFR 3.8, 3.22 and 242.22 where applicable.

(3) *Pursuant to appeal to the Board of Immigration Appeals.* If jurisdiction over the proceedings is vested in the Board of Immigration Appeals under part 3 of this chapter, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to remand or reopen pursuant to 8 CFR 3.2 and 3.8 where applicable.

(4) Any motion to reopen or remand accompanied by an initial application for asylum filed under paragraph (b) of this section must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

§ 208.5 Special duties toward aliens in custody of the Service.

(a) When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms

for asylum and withholding of deportation and shall provide the applicant with a list, if available, of persons or private agencies that can assist in preparation of the application.

(b) Where possible, expedited consideration shall be given to applications of aliens detained under 8 CFR part 235 or 242. Except as provided in paragraph (c) of this section, such alien shall not be deported or excluded before a decision is rendered on his initial asylum or withholding of deportation application.

(c) A motion to reopen or an order to remand accompanied by an application for asylum or withholding of deportation pursuant to § 208.4(b) shall not stay execution of a final order of exclusion or deportation unless such a stay is specifically granted by the Board or the Immigration Judge having jurisdiction over the motion.

§ 208.6 Disclosure to third parties.

(a) An application for asylum or withholding of deportation shall not be disclosed, except as permitted by this section, or at the discretion of the Attorney General, without the written consent of the applicant. Names and other identifying details shall be deleted from copies of asylum or withholding of deportation decisions maintained in public reading rooms under § 103.9 of this chapter.

(b) The confidentiality of other records kept by the Service (including G-325A forms) that indicate that a specific alien has applied for asylum or withholding of deportation shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained when they are transmitted to State Department offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) Adjudication of asylum or withholding of deportation applications;

(ii) The defense of any legal action arising from the adjudication of or fail-

ure to adjudicate the asylum or withholding of deportation application;

(iii) The defense of any legal action of which the asylum or withholding of deportation application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application; or

(ii) Arising from the proceedings of which the asylum or withholding of deportation application is a part.

§ 208.7 Employment authorization.

(a)(1) An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with §§ 208.3 and 208.4 of this part has been received. If an application for asylum has been returned as incomplete in accordance with § 208.3(c)(5), the 150-day period will commence upon receipt by the INS of a complete application for asylum. An applicant whose application for asylum has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. After the expiration of the 150-day period, the INS shall have 30 days from the date of filing of an initial application for employment authorization to grant or deny that application. If the INS fails to adjudicate the employment application within that period, the alien shall be eligible for interim employment authorization under this chapter. If an application for asylum is denied by an immigration judge or an asylum officer within the 30-day period, but prior to a decision on the application for employment authorization, the application for employment authorization shall be denied.

(2) An applicant who has been convicted of an aggravated felony shall not be granted employment authorization. In cases where an applicant has previously received employment authorization and his or her application for asylum or withholding of deportation is denied because the applicant has been convicted of an aggravated felony, the employment authorization shall terminate as of the date of the denial.

(3) For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the INS must respond to any such application shall begin when the alien has filed a complete asylum application in accordance with §§208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under §103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(4) An applicant who fails without good cause to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge shall not be granted employment authorization pursuant to §274a.12(c)(8) of this chapter.

(5) The provisions of paragraphs (a) (1), (3), and (4) of this section shall apply to persons who have filed an application for asylum or withholding of deportation on or after January 4, 1995.

(b) Subject to the restrictions in paragraph (b)(3) of this section, employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

(1) If the asylum application is denied by the Asylum Officer, the employment authorization shall terminate at the expiration of the employment authorization document or sixty days after the denial of asylum, whichever is longer.

(2) If the application is denied by the Immigration Judge, the Board of Im-

migration Appeals, or upon judicial review of the asylum denial, the employment authorization terminates upon the expiration of the employment authorization document.

(3) If an application for asylum filed on or after November 29, 1990 is denied pursuant to §208.14(c)(4) or §208.16(c)(2)(ii) because the applicant has been convicted of an aggravated felony, any employment authorization previously issued under §208.7(a) shall automatically terminate as of the date of the denial.

(c) In order for employment authorization to be renewed under this section, the alien must provide the INS, in accordance with the instructions on or attached to the employment authorization application, with a Form I-765, with fee and proof that he has continued to pursue his application for asylum before an immigration judge or sought administrative or judicial review. Pursuit of an application for asylum, for purposes of employment authorization is established by presenting to the INS one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending before the immigration judge, and the alien wishes to pursue an application for asylum, a copy of the asylum denial and the Order to Show Cause (Form I-221/I-221S) or Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I-122) placing the alien in proceedings after asylum has been denied;

(2) If the immigration judge has denied asylum a copy of the Notice of Appeal (EOIR-26) date stamped by the Immigration Court to show that a timely appeal has been filed from a denial of the asylum application by the immigration judge; or

(3) If the Board has dismissed the alien's appeal of the denial of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 106 of the Immigration and Nationality Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, applications for renewal must be received by the Service ninety days

prior to expiration of the employment authorization.

(e) Upon the denied applicant's request, the INS may grant further employment authorization pursuant to 8 CFR 274a.12(c)(12).

[55 FR 30680, July 27, 1990, as amended at 58 FR 12148, Mar. 3, 1993; 59 FR 62299, Dec. 5, 1994; 60 FR 21974, 21975, May 4, 1995; 60 FR 34090, June 30, 1995]

§ 208.8 Limitations on travel outside the United States.

An applicant who leaves the United States pursuant to advance parole granted under 8 CFR 212.5(e) shall be presumed to have abandoned his application under this section if he returns to the country of claimed persecution unless the applicant is able to establish compelling reasons for such return.

[59 FR 62299, Dec. 5, 1994]

§ 208.9 Interview and procedure.

(a) For each application for asylum or withholding of deportation that is complete within the meaning of § 208.3(c)(5) and that is within the jurisdiction of the Office of Refugees, Asylum, and Parole, an interview shall be conducted by an asylum officer, either at the time of the application or at a later date to be determined by the Asylum Office. Applications within the jurisdiction of an immigration judge are to be adjudicated under the rules of procedure established by the Executive Office for Immigration Review in parts 3, 236, and 242 of this chapter.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present, may present witnesses, and may sub-

mit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or his representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer, in his or her discretion, may limit the length of such statement or comment and may require their submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(b).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by equivalent time the periods specified by § 208.7 for the filing and adjudication of employment authorization applications.

(f) The application, all supporting information provided by the applicant, any comments submitted by the Department of State, or by the Service, and any other information considered

by the Asylum Officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the INS, a competent interpreter fluent in both English and the applicant's native language. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record nor a witness testifying on the applicant's behalf may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure without good cause to appear for the interview for purposes of § 208.10.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62299, Dec. 5, 1994]

§ 208.10 Failure to appear.

The failure without good cause of an applicant to appear for a scheduled interview under § 208.9(a) may be deemed to constitute a waiver of the right to an interview with an asylum officer or, in the case of an alien crewman, stowaway, alien temporarily excludable under section 235(c) of the Act, 8 U.S.C. 1225, or alien currently in lawful immigration status, may be deemed to constitute an abandonment of the application. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of Refugees, Asylum, and Parole by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview. Such failure to appear may be excused for other serious reasons in the discretion of the asylum officer.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.11 Comments from the Department of State.

(a) At its option, the Department of State may provide detailed country conditions information addressing the specific conditions relevant to eligibility for refugee status according to the grounds specified in section

101(a)(42) of the Act, 8 U.S.C. 1101(a)(42). Any such information relied upon by an immigration judge in deciding a claim for asylum or withholding of deportation shall be made part of the record and the parties shall be provided an opportunity to review and respond to such information prior to the issuance of a decision.

(b) At its option, the Department of State also may comment on an application it receives pursuant to § 208.4(a), § 236.3, or § 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual residence and the frequency of such persecution;

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate. Any such comments shall be made part of the record. Unless the comments are classified under Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of an adverse decision.

[59 FR 62300, Dec. 5, 1994]

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding applications for asylum or withholding of deportation, the asylum officer may rely on material provided by the Department of State, the Office of Refugees, Asylum, and Parole, the district director having jurisdiction over the place of the applicant's residence or the port of entry from which the applicant seeks admission to the United States, or other credible sources, such as international organizations, private voluntary agencies, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.13 Establishing refugee status; burden of proof.

(a) The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) The applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he can establish that he has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but is determined not also to have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to

his country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he may be granted asylum unless such a grant is barred by paragraph (c) of this section or § 208.14(d).

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he can establish first, that he has a fear of persecution in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, second, that there is a reasonable possibility of actually suffering such persecution if he were to return to that country, and third, that he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

(i) In evaluating whether the applicant has sustained his burden of proving that he has a well-founded fear of persecution, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for persecution if:

(A) He establishes that there is a pattern or practice in his country of nationality or last habitual residence of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) He establishes his own inclusion in and identification with such group of persons such that his fear of persecution upon return is reasonable.

(ii) The asylum officer or immigration judge shall give due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(c) An applicant shall not qualify as a refugee if he ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence indicates that the applicant engaged in such conduct, he shall have the burden

of proving by a preponderance of the evidence that he did not so act.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.14 Approval, denial, or referral of application.

(a) An immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act unless otherwise prohibited by paragraph (d) of this section.

(b) (1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42), unless otherwise prohibited by paragraph (d) of this section.

(2) In the case of an alien (other than a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c)) who shall appear to be deportable under section 241 of the Act, 8 U.S.C. 1251, or excludable under section 212 of the Act, 8 U.S.C. 1182, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation or exclusion proceedings commenced in accordance with part 236 or part 242 of this chapter. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9 or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview.

(3) In the case of a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), the asylum officer may grant or deny asylum in accordance with the procedures set forth in § 253.1(f) of this chapter. In addition, where an application filed by such a person is not granted, the asylum officer shall issue a Notice of Intent to Deny to the applicant stating the reasons why the application would be denied. The applicant shall be given a period not less than 10 days to rebut the Notice of Intent to Deny.

(4) In the case of a person other than described in paragraphs (b) (2) and (3) of this section, the asylum officer may grant or deny asylum.

(5) No application for asylum or withholding of deportation shall be subject

to denial under the authority contained in § 103.2(b) of this chapter.

(c) If the evidence indicates that one or more of the grounds for denial of asylum enumerated in paragraph (d) of this section may apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(d) *Mandatory denials.* An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(2) The applicant has been firmly resettled within the meaning of § 208.15;

(3) There are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

(e) *Discretionary denials.* An application from an alien may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he establishes:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation; or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry and/or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* With the exception of cases that are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, and aliens classified pursuant to section 101(a)(15)(S) of the Act, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated, and exclusion or deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an immigration judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

(b) *Eligibility for withholding of deportation; burden of proof.* The burden of proof is on the applicant for withholding of deportation to establish that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last

habitual residence, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his life or freedom was threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for such persecution if:

(i) He establishes that there is a pattern or practice in the country of proposed deportation of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) He establishes his own inclusion in and identification with such group of persons such that it is more likely than not that his life or freedom would be threatened upon return.

(4) In addition, the asylum officer or immigration judge shall give due consideration to evidence that the life or freedom of nationals or residents of the country of claimed persecution is threatened if they leave the country without authorization or seek asylum in another country.

(c) *Approval or denial of application.* The following standards shall govern

approval or denial of applications for withholding of deportation:

(1) Subject to paragraph (c)(2) of this section, an application for withholding of deportation to a country of proposed deportation shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) An application for withholding of deportation shall be denied if:

(i) The alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States. An alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime and to constitute a danger to the community of the United States;

(iii) There are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or

(iv) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(3) If the evidence indicates that one or more of the grounds for denial of withholding of deportation enumerated in paragraph (c)(2) of this section apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(4) In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him, the denial of asylum shall be reconsidered. Factors to be so considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his spouse or minor children in a third country.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994; 60 FR 44264, Aug. 25, 1995]

§ 208.17 Decision.

The decision of an asylum officer to grant or to deny asylum or withholding of deportation, or to refer an application in accordance with § 208.14(b), shall be communicated in writing to the applicant, to the Assistant Commissioner, Refugees, Asylum, and Parole, and to the district director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant sought admission to the United States. A letter communicating denial of the application shall state why asylum or withholding of deportation was denied. The letter also shall contain an assessment of the applicant's credibility, unless the application was denied pursuant to § 208.14(d)(4) or § 208.16(c)(2)(ii).

Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

[59 FR 62301, Dec. 5, 1994]

§ 208.18 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugees, Asylum, and Parole, may review decisions by asylum officers. Parties shall have no right of appeal to or right to appear before the Assistant Commissioner in the course of such review.

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an asylum officer. In a case referred to an immigration judge in accordance with § 208.14(b), the supervisory asylum officer, pursuant to the authority set forth in §§ 235.6(a) and 242.1(a) of this chapter, shall issue respectively a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I-122) or an Order to Show Cause (Form I-221).

(c) A denial of asylum or withholding of deportation may only be reviewed by the Board of Immigration Appeals in conjunction with an appeal taken under 8 CFR part 3.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994]

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied

may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.23, 103.5, and 242.22 where applicable.

(b) A motion to reopen or reconsider shall be filed:

(1) With the District Director having jurisdiction over the location at which the prior determination was made who shall forward the motion immediately to an Asylum Officer; or

(2) With the Immigration Court having jurisdiction over the prior proceeding.

[55 FR 30680, July 27, 1990, as amended at 60 FR 34090, June 30, 1995; 61 FR 18909, Apr. 29, 1996]

§ 208.20 Approval and employment authorization.

An alien granted asylum and eligible derivative family members are authorized to be employed in the United States pursuant to § 274a.12(a)(5) of this chapter and if intending to be employed, must apply to the INS for a document evidencing such authorization. The INS shall issue such document within 30 days of the receipt of the application therefor.

[59 FR 62301, Dec. 5, 1994]

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1)(A), (B), (C), (D), (E), or (F) of the Act, 8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E), or (F), also may be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that:

(1) The spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion;

(2) The spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States;

(3) The spouse or child has been convicted of an aggravated felony, as de-

fined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43); or

(4) There are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship.* The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I-730 with the District Director having jurisdiction over his place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the principal alien may request asylum for the spouse or child by filing form I-730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice explaining the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c)(2) and (c)(3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he is

making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994]

§ 208.22 Effect on deportation proceedings.

(a) An alien who has been granted asylum may not be excluded or deported unless his asylum status is revoked pursuant to § 208.24. An alien in exclusion or deportation proceedings who is granted withholding of deportation may not be deported to the country as to which his deportation is ordered withheld unless withholding of deportation is revoked pursuant to § 208.24.

(b) When an alien's asylum status or withholding of deportation is revoked under this chapter, he shall be placed in exclusion or deportation proceedings. Exclusion or deportation proceedings may be conducted concurrently with a revocation hearing scheduled under § 208.24.

§ 208.23 Restoration of status.

An alien who was maintaining his nonimmigrant status at the time of filing an application for asylum or withholding of deportation may continue or be restored to that status, if it has not expired, notwithstanding the denial of asylum or withholding of deportation.

§ 208.24 Revocation of asylum or withholding of deportation.

(a) *Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following an interview by an asylum officer, the grant to an alien of asylum made under the jurisdiction of an asylum officer or a district director may be revoked if, by a preponderance of the evidence, the INS establishes that:

(1) The alien no longer has a well-founded fear of persecution upon return due to a change of conditions in the alien's country of nationality or habitual residence;

(2) There is a showing of fraud in the alien's application such that he was not eligible for asylum at the time it was granted; or

(3) The alien has committed any act that would have been grounds for denial of asylum under § 208.14(d).

(b) *Revocation of withholding of deportation by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following an interview by an asylum officer, the grant to an alien of withholding of deportation made under the jurisdiction of an asylum officer or a district director may be revoked if, by a preponderance of the evidence, the INS establishes that:

(1) The alien is no longer entitled to withholding of deportation due to a change of conditions in the country to which deportation was withheld;

(2) There is a showing of fraud in the alien's application such that he was not eligible for withholding of deportation at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of deportation under § 208.16(c)(2).

(c) *Notice to applicant.* Upon motion by the Assistant Commissioner to revoke asylum status or withholding of deportation, the alien shall be given notice of intent to revoke, with the reason therefore, at least thirty days before the interview by the asylum officer. The alien shall be provided the opportunity to present evidence tending to show that he or she is still eligible for asylum or withholding of deportation. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation, the alien shall be given written notice that asylum status or withholding of deportation along with employment authorization are revoked. Notwithstanding any provision of this section, an alien granted asylum or withholding of deportation who is subject to revocation because he or she has been convicted of an aggravated felony is not entitled to an interview before an asylum officer.

(d) *Revocation of derivative status.* The termination of asylum status for a person who was the principal applicant

shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal.

(e) *Reassertion of asylum claim.* A revocation of asylum or withholding of deportation pursuant to paragraphs (a) or (b) of this section shall not preclude an applicant from reasserting an asylum or withholding of deportation claim in any subsequent exclusion or deportation proceeding.

(f) *Revocation of asylum or withholding of deportation by the Executive Office for Immigration Review.* An Immigration Judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 242.22 of this chapter for the purpose of revoking a grant of asylum or withholding of deportation made under the exclusive jurisdiction of an Immigration Judge. In such a reopened proceeding, the Service must similarly establish by the appropriate standard of evidence one or more of the grounds set forth in paragraphs (a) or (b) of this section. Any revocation under this paragraph may occur in conjunction with an exclusion or deportation proceeding.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994]

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Sec.

209.1 Admission for permanent residence after one year.

209.2 Adjustment of status of alien granted asylum.

AUTHORITY: 8 U.S.C. 1101, 1103, 1157, 1158, and 1159; 31 U.S.C. 9701.

§ 209.1 Admission for permanent residence after one year.

(a) *Eligibility.* (1) Every alien in the United States as a refugee under § 207 of this chapter whose status has not been terminated, is required to appear before an immigration officer one year after entry to determine his/her admissibility under sections 235, 236, and 237 of the Act. The applicant shall be examined under oath to determine admissibility. If the applicant is found to be admissible, he/she shall be inspected and admitted for lawful permanent resi-

idence as of the date of the alien's arrival in the United States. If the applicant is determined to be inadmissible, he/she shall be informed that he/she may renew the request for admission to the United States as an immigrant in exclusion proceedings under section 236 of the Act. The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act, whose application is based on his/her refugee status.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980 shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Processing Application.* One year after arrival in the United States, every refugee entrant shall be notified to appear for examination before an immigration officer. Each applicant shall be examined under oath to determine eligibility for permanent residence. If the refugee entrant has been physically present in the United States for at least one year, forms FD-258 (Applicant Card) and G-325A (Biographical Information) will be processed. Unless there were medical grounds for exclusion at the time of arrival, a United States Public Health Service medical examination is not required. If the alien is found admissible after inspection under section 209(a) of the Act, he/she shall be processed for issuance of Form I-551 (Alien Registration Receipt Card).

[46 FR 45119, Sept. 10, 1981]

§ 209.2 Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for